

**REMARKS**Rejection of claim 28 under 35 U.S.C. §101

The Office Action states “Claim 28 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.” Applicant respectfully disagrees and traverses the rejection. Applicant’s specification discloses information stored on non-writable storage media such as CD-ROM and writable storage media such as floppy disk, and computer readable carriers carrying computer-readable instructions that direct functions of the invention. See Applicant’s specification, para [0050]. In re Beauregard, 53 F.3d 1583 (Fed. Cir. 1995), the Federal Circuit upheld a computer program as patentable subject matter because it was claimed in terms of an article of manufacture as contained on a floppy disk. Accordingly, Applicant believes that claim 28 should be allowable. Therefore, Applicant respectfully requests the rejection be withdrawn.

Rejection of claims 1-28 under 35 U.S.C. § 103 (a) as being unpatentable over US 5687095 (Haskell) in view of US 20020106022 (Satoh), and in view of US 7079581 (Noh)

Applicant respectfully traverses the rejection of claims 1-28. Reconsideration is respectfully requested.

Applicant respectfully submits that the combination of Haskell, Satoh, and Noh does not teach or suggest all the claim limitations as set forth in independent claims 1, 13, 26, 27, and 28. For example, independent claim 1 recites “determining an adjustment factor that is a ratio of a number of bits representing a selected frame defined by said bitstream to a target number of bits for said selected frame” which is not taught or suggested in the combination of Haskell, Satoh, and Noh.

Applicant respectfully disagrees with the statement in item 12, page 6, of the Office Action dated September 11, 2008 that the combination of Haskell, Satoh, and Noh describes “determining an adjustment factor that is a ratio of a number of bits representing a selected frame defined by said bitstream to a target number of bits for said selected frame.” The Office Action specifically refers to “parameter r,” described in column 8 of Noh as being analogous to

Applicant's "adjustment factor." This analogy is, however, a mischaracterization. According to Applicant's claim "adjustment factor [that] is a ratio of a number of bits representing a selected frame defined by said bitstream to a target number of bits for said selected frame." In contrast, Noh's parameter  $r$  is obtained by dividing a production rate of bit by a target bit rate. The production rate of bit is a rate at which bits in a video frame are produced. The production rate is a variable quantity that changes in accordance with movement and activity of video data. See Noh, col.8, lines 17-21, and col. 6, lines 36-41. Thus, in Noh's parameter  $r$  is based on a production rate of bit and not based on a number of bits in a frame. Accordingly, Applicant's "adjustment factor" cannot be equated to Noh's "parameter  $r$ ." Therefore, Noh does not disclose Applicant's "determining an adjustment factor that is a ratio of a number of bits representing a selected frame defined by said bitstream to a target number of bits for said selected frame" as recited in independent claim 1.

In view of the foregoing, Noh also does not disclose "adjustment factor" as recited in Applicant's independent claims 13 and 28; "quantization adjustment factors" as recited in Applicant's independent claim 26; and "means for determining a ratio of a number of bits representing a selected frame defined by said bitstream to a target number of bits for said selected frame" as recited in Applicant's independent claim 27.

Further, the Office Action refers to column 9, lines 8-14 of Haskell as describing Applicant's "determining an average spatial activity value among sets of video data associated with said selected frame" as recited in independent claims 1 and 28. The Office Action specifically refers to Haskell's average number of bits per frame as being analogous to Applicant's "average spatial activity value among sets of video data." However, Haskell merely discloses computing average number of bits per frame in video data, but fails to disclose determining an average spatial activity value among frames. Therefore, Haskell does not disclose Applicant's "determining an average spatial activity value among sets of video data associated with said selected frame" as recited in independent claims 1 and 28.

In view of the foregoing, Haskell also does not disclose "average spatial activity value among macroblocks" as recited in Applicant's independent claim 13; and "average spatial

activity value among sets of frequency domain coefficients” as recited in Applicant’s independent claim 27.

Furthermore, the combination of Haskell, Satoh, and Noh does not disclose Applicant’s “wherein adjustment is conditional on said number of bits being unequal to said target number of bits” as recited in independent claim 26. In particular, it appears that the Office Action equates Satoh’s multiplication factor ‘2’ in equation 22 to be equivalent to Applicant’s adjustment factor. See Satoh, para [0038]. However, in Satoh’s equation 22, multiplication factor ‘2’ is a constant value. In contrast, Applicant’s adjustment factor is a ratio of number of bits in a frame to a target number of bits, and therefore, the adjustment factor may vary for different frames. Satoh nowhere discloses that multiplication factor ‘2’ is a ratio of two quantities. Since, Satoh fails to disclose Applicant’s “adjustment factor,” it also fails to disclose a condition of number of bits being unequal to target number of bits. Therefore, Satoh does not disclose “wherein adjustment is conditional on said number of bits being unequal to said target number of bits” as recited in Applicant’s independent claim 26.

For the above reasons, Applicant submits that claims 1, 13, 26, 27, and 28 are not obvious in view of the combination of Haskell, Satoh, and Noh, and therefore that the rejection of claims 1, 13, 26, 27, and 28 under 35 USC 103(a) should be withdrawn. Applicant requests that claims 1, 13, 26, 27, and 28 now be passed to allowance.

Dependent claims 2-12, and 14-25 depend from, and include all the limitations of independent claims 1 and 13 respectively. Therefore, Applicant respectfully requests the reconsideration of dependent claims 2-12, and 14-25 and requests withdrawal of the rejection.

Conclusion

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Should the Examiner have any questions, comments, or suggestions, the Examiner is invited to contact the Applicant's attorney at the telephone number indicated below.

Please charge any fees that may be due to Deposit Account 502117, Motorola, Inc.

Respectfully submitted,  
NEMIROFF, et al.

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By: /Stewart M. Wiener/  
Stewart M. Wiener  
*Attorney for Applicant*  
Registration No. 46,201  
Tel. No. (215) 323-1811

MOTOROLA, INC.  
101 Tournament Drive  
Horsham, PA 19044  
Fax No. (215) 323-1300